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UNCLAS SECTION 01 OF 02 HO CHI MINH CITY 000606

SIPDIS

State for EB/IPC:DRBEAN, EAP/BCLTV, and EB/ODC
State pass to USTR Burcky/Alvarez and Elena Bryan
State also pass to USPTO for Urban and Fowler
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SUBJECT: SAME OLD IPR SONG IN VIETNAM -- BUT ARE THOSE SOME NEW LYRICS?

SUMMARY

1. In stark contrast with Vietnam's usual indifference to IPR violations, press and public opinion have turned on a local composer who apparently plagiarized a song written by a Japanese composer. After front-page play in the local press, the Musicians Association of Vietnam is mulling action and the government is considering tighter IPR regulations to cover such plagiarism. Nonetheless, there is still no legal recourse for the song's true composer.

NOT JUST ANOTHER COPY

2. Most Ho Chi Minh City consumers - as well as local law enforcement officials - are indifferent to the counterfeits and copies in their midst. Venues for buying pirated DVDs, CDs, and VCDs number in the thousands, and range from tiny, decrepit storefronts to well-stocked counters in downtown shopping centers. Pirated discs are merely the tip of the iceberg. Clothing of dubious origin, counterfeit motorcycle parts, knock-off medicine, and books hot off the photocopier abound.

3. All the more surprising then is the recent public condemnation of a Vietnamese composer, Bao Chan, who allegedly stole a melody from a Japanese composer and passed it off as his own. Since the mid-1990s, a piece of music entitled "Tinh Thoi Xot Xa" (Love is No Longer Bitter) and "composed by Bao Chan", has been familiar to Vietnamese audiences. Its most famous version was a 1996 release by Vietnamese pop star Lam Truong.

4. In early April, Vietnamese newspapers began running front-page stories detailing the claims of Japanese composer Keiko Matsui, who said "Love is No Longer Bitter" was musically identical to her song "Frontier", published in 1991. "Frontier" had been used for a Super Mario Brothers/Nintendo game in 1991, and later released on Ms. Matsui's album "Cherry Blossom" in 1992. Bao Chan countered that he wrote "his" song in the 1980s, but could not remember exactly when. Nor could he produce the original draft. No one has come forward to vouch for the song's existence in Vietnam prior to the release date claimed by Keiko Matsui. At last report, Bao Chan, who describes himself as disorganized, was searching his papers for an early version of "Love is No Longer Bitter."

CASE SEEMS TO HAVE STRUCK A CHORD

5. The "Ai Copy Ai" (Who Has Copied Whom) controversy has generated intense public interest. Major daily newspapers have published letters from Ms. Matsui and her producer, devoting significant space to the topic. A letter to one daily, Nguoi Lao Dong (The Worker), even described a mathematical analysis of the songs to determine the odds that they could be coincidentally similar. The odds that two composers each wrote this particular song independently are 1 in 282,475,249 per single verse of music. Forget an entire song. The same newspaper convened a panel of three highly-respected music professors to review the songs. Unfortunately for Bao Chan, the panel and the court of public opinion concluded he stole the music.

NOTHING FOR THE TRUE COMPOSER

6. Vietnam is not yet a signatory to the Berne Convention, and Japan and Vietnam do not have bilateral agreements covering IPR. As Ms. Matsui's producer wrote to a local paper, "If this had happened in the U.S., our management company and publishers would take it to court, (where) we could win easily." Not in Vietnam, however. The National Copyright Office has publicly stated that the case does not fall under their jurisdiction, presumably because Ms. Matsui never registered her song in Vietnam.

GOVERNMENT MAY TAKE ACTION, BUT NOT MUCH

7. Still, the GVN or at least a government-sponsored organization may take some action. Newspaper accounts and ConGen contacts familiar with the case have suggested that the Communist Party-controlled Musicians Association of Vietnam (whose membership includes most professional composers) would probably handle the

case. These contacts say the Association might demand Bao Chan publicly admit his guilt and apologize to the Japanese composer. The Association could also strip him of professional memberships. Whatever the sanctions, it appears that if his peers deem Bao Chan guilty, his career as a composer will be seriously damaged.

18. The GVN is also considering new legal sanctions against future offenders. The Deputy Minister of Culture and Information (MOCI) has condemned "creative" piracy, and publicly stated that MOCI would unveil a new administrative penalty proposal this month. However, the head of MOCI's legal department told ConGen that this proposal, which would be vetted by the Ministry of Justice before going to the Prime Minister for approval, does not increase penalties for IPR violators above their current nominal levels. It simply expands the scope of current regulations to include categories such as Bao Chan's alleged music plagiarism.

COMMENT

19. The fact that a Vietnamese composer took credit for another's original work has offended local sensibilities far more than millions of copies of pirated Microsoft software. Yet in a city where IPR violations are rampant, it is a positive sign that this case has drawn so much public attention and coverage in the government-controlled media -- particularly since the rights holder is a foreigner. The move to expand the universe of punishable IPR violations is also encouraging, though the miniscule penalties are scant disincentive. But it still leaves Ms. Matsui with no legal recourse in Vietnam.

YAMAUCHI